

No. 99-1791

[UNPUBLISHED]

Sparano, (Vin), individually; Thomas *
Stienstra, individually; Kris W. *
Thoemke, individually; Spencer E. *
Turner, individually; Thomas Ulrich, *
individually; H. Theodore Upgren, Jr.; *
Thomas M. Wharton, (Tom), *
individually; Patrick Wray, (Pat), *
individually, *
*

Appellees.

Submitted: September 28, 2000

Filed: October 12, 2000

Before McMILLIAN, BOWMAN, and MORRIS SHEPPARD ARNOLD, Circuit
Judges.

PER CURIAM.

John E. Tuschmidt appeals from the final judgment entered in the District Court¹ for the Eastern District of Missouri, dismissing with prejudice his diversity action for failure to comply with a case management order (CMO). For reversal, Tuschmidt argues that dismissal was inappropriate because he had presented genuine issues of material fact relating to the claims he had raised in his complaint, particularly a defamation claim, and that the district court erred in issuing various other orders throughout the proceeding. For the reasons discussed below, we affirm the judgment of the district court.

¹The Honorable Stephen N. Limbaugh, United States District Judge for the Eastern District of Missouri.

We review Fed. R. Civ. P. 41(b) sua sponte dismissals for abuse of discretion, see Sterling v. United States, 985 F.2d 411, 412 (8th Cir. 1993) (per curiam), and the district court's underlying factual findings for clear error, see Avionic Co. v. General Dynamics Corp., 957 F.2d 555, 558 (8th Cir. 1992). We find no abuse of discretion because the record supports the district court's implicit finding that Tuchschiidt willfully disobeyed the CMO: he exhibited a pattern of delay throughout the proceedings; he made no attempt to submit any pretrial materials; instead, the day after his pretrial compliance was due, he filed a fifteen-page motion and three affidavits challenging a prior ruling of the court and reasserting the substance of prior unsuccessful motions; and, contrary to what he had done previously when he could not meet a filing deadline, he did not request an extension. The district court, moreover, had repeatedly granted him extensions and shown him leniency, and had twice warned him that violating court-ordered deadlines could result in sanctions, including dismissal. See Aziz v. Wright, 34 F.3d 587, 588-89 (8th Cir. 1994), cert. denied, 513 U.S. 1090 (1995); First Gen. Resources Co. v. Elton Leather Corp., 958 F.2d 204, 206 (8th Cir. 1992) (per curiam); Lorin Corp. v. Goto & Co., 700 F.2d 1202, 1207-08 (8th Cir. 1983).

Tuchschiidt designated only the dismissal order in his notice of appeal. See Fed. R. App. P. 3(c)(1)(B). However, because he raises--and defendants address--arguments related to other orders the district court issued prior to dismissal, he may have intended to appeal these orders as well. See Hawkins v. City of Farmington, 189 F.3d 695, 704 (8th Cir. 1999) (liberally construing notices of appeal when intent to appeal is apparent and adverse party is not prejudiced). Assuming such intent on Tuchschiidt's part, we have reviewed the record and conclude the district court did not abuse its discretion in issuing these orders. See Morris v. Dormire, 217 F.3d 556, 558-59 (8th Cir. 2000) (appointment of counsel); Trost v. Trek Bicycle Corp., 162 F.3d 1004, 1009 (8th Cir. 1998) (discovery sanctions); Teamsters Nat'l Freight Indus. Negotiating Comm. ex rel. Teamster Local Union No. 116 v. MME, Inc., 116 F.3d 1241, 1242 (8th Cir. 1997) (per curiam) (sanctions); Harker v. Commissioner, 82 F.3d

806, 808 (8th Cir. 1996) (disqualification of defense counsel); Pope v. Federal Express Corp., 974 F.2d 982, 985 (8th Cir. 1992) (recusal); Williams v. Mensey, 785 F.2d 631, 636-37 (8th Cir. 1986) (production of documents). We also conclude the district court properly granted summary judgment to defendants on Tuchschildt's defamation claim (arising out of a notice Outdoor Writers Association of America, Inc., published in a newsletter), because defendants' un rebutted evidence showed that the published statements were not false or materially false. See Love v. Commerce Bank, 37 F.3d 1295, 1296 (8th Cir. 1994) (truth is absolute defense to defamation action; applying Missouri law).

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.